

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2890 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

JILUBEN WD/O INKLABHAI KURESHI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner
MR KT DAVE, AGP for Respondent No. 1 to 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 02/05/2000

ORAL JUDGEMENT

#. The petitioner - Smt. Jiluben, wife of Inkalabbhai Qureshi, has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by Commissioner of Police, Rajkot City, Rajkot in exercise

of powers under Section 3(1) of the PASA Act, dated January 20, 2000.

#. The grounds of detention indicate that the detaining authority took into consideration one offence registered against the petitioner. The detaining authority came to conclusion that the petitioner is a "bootlegger" and that her activities are detrimental to public order. The detaining authority considered the possibility of resorting to externment under section 57(c) of the Bombay Police Act while considering the less drastic remedy. The authority observed that after getting bailed out, the petitioner may engage himself in such illegal anti-social activities.

#. The petitioner has challenged this order of detention on various counts. However, learned advocate for the petitioner has restricted his arguments to the fact that the order is based on extraneous and irrelevant considerations namely, consideration of section 57 (c) of the Bombay Police Act wherein minimum two convictions under the Bombay Prohibition Act are required for externing the petitioner which are non-existent. She, therefore, submitted that therefore, there was no scope for the detainee to pursue his alleged illegal activity immediately.

#. Mr. K.T.Dave, learned AGP has opposed this petition.

#. Having regard to the rival side contentions, close reading of the grounds of detention indicates that the order cannot be supported for the reason that the detaining authority has taken into consideration the possibility of resorting to proceedings under section 57(c) of the Bombay Police Act and there is only one offence registered against the detainee, which is pending investigation. There is no allegation that there were earlier convictions of the detainee. Under the circumstances, in the absence of any convictions, there was no question of considering the possibility of resorting to proceedings under section 57 (c) of the Bombay Police Act. Consideration of this provision by the detaining authority indicates that the authority has considered relevant and extraneous material reflecting non-application of mind which would vitiate the order of detention. In this regard, the decision in the case of Bhupatbhai R. Vasava v. District Magistrate, Bharuch, 1992 (2) GLH 350 can be profitably be used. Therefore, the petition deserves to be allowed.

#. In view of the aforesaid discussion, the petition is

allowed. The impugned order of detention dated January 20, 2000 is hereby quashed and set aside. The detenue - Smt. Jiluben, wife of Inkalabbhai Qureshi, is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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